**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**FIRST APPEAL No. 172 of 1988**

**HONOURABLE MR.JUSTICE KS JHAVERI**

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**MUKESH DHIRUBHAI RUSHI - Appellant(s)**
**Versus**
**MANILAL MAGANLAL PARMAR, [DELETED]. & 3 - Defendant(s)**

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**Appearance :**
MR CG MEHTA for Appellant(s) : 1,MR KIRAN C MEHTA for Appellant(s) : 1,
NOTICE UNSERVED for Defendant(s) : 1,
None for Defendant(s) : 2, 4,
MR PV NANAVATI for Defendant(s) : 3,

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**CORAM : HONOURABLE MR.JUSTICE KS JHAVERI**

**Date : 25/08/2006**

**ORAL JUDGMENT**

1. This appeal is directed against the judgement and award dated 26th November 1982 passed by the Motor Accident Claims Tribunal No.2 (Aux.), Ahmedabad in MACP No.69 of 1981 whereby the Tribunal has partly allowed the said claim petition.

2. The case of the claimant was that while he was crossing the road, a motor cycle was passing and at that time a truck came and dashed with the motor cycle which in turn knocked down the claimant and sustained injuries. He, therefore filed the aforesaid claim petition which was partly allowed.

3. The only contention raised on behalf of the appellant is that the

Tribunal has committed an error in fixing the liability of each tortfeasor.

4. As a result of hearing and perusal of the record it is found that the Tribunal has discussed the issue of contributory negligence in detail. The contributory negligence is not challenged in this appeal and therefore the said fact has been accepted by the appellant. When there is a finding is recorded on the contributory negligence, it will always be open to the Tribunal to pass appropriate orders fixing the liability of the parties. The issue with regard to contributory negligence is not challenged which cannot be disputed by the parties. Therefore, I am of the view that the contention of the appellant cannot be accepted.

5. Learned Advocate for the appellant has relied upon a decision of the Karnataka High Court in the case of S.D. Balaji V. Karnataka State Road Transport Corporation, reported in 1985 ACJ 150 wherein it is held that pillion rider has nothing to do with the occurrence of the accident and he can proceed against any one of the joint tort-feasors who are jointly and severally liable. Thus, the ratio laid down in the said decision is with regard to pillion rider and therefore, the facts of the present case is entirely different from that of aforesaid decision. Therefore, I am of the view that the aforesaid decision would be of no assistance to the appellant.

6. Even otherwise, the claim in the present appeal is less than Rs.25000/-.It has been the consistent practice of this High Court not to enter into the merits of those appeals wherein the claim in appeal is small, and claims upto Rs.25000/- have been quantified by this Court as petty claims. Even on this ground the appeal deserves to be dismissed.

7. In the premises aforesaid I do not find any merits in the present appeal and the same is accordingly dismissed.

[K.S. JHAVERI, J.]

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